

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN G. DALE and BRADFRED W. CULP

Appeal 2007-3132
Application 10/064,080
Technology Center 2100

Decided: December 13, 2007

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-19 and 22. Claims 21 and 21 have been withdrawn in response to a Restriction Requirement filed Nov. 16, 2205 (App. Br. 6). We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

A. INVENTION

1 The invention at issue involves a network system in which information pertaining to devices in the network is provided to devices that request the data. In particular, Appellants' invention provides for a router coupled to a cache where the cache stores data associated with a device (Spec. 5). In response to an inquiry or request, the router reads the stored data from cache and forwards the data from the cache to the requesting device (*Id.* 7).

B. ILLUSTRATIVE CLAIMS

Claims 1 and 11, which further illustrate the invention, follow.

1. A method of using a router to cache inquiry data corresponding to a target device in a network having a plurality of client devices, the method comprising:

- storing inquiry data corresponding to a target device in a cache memory;

- receiving a request for the inquiry data corresponding to the target device;

- reading the inquiry data from the cache memory; and

- providing the inquiry data corresponding to the target device in response to the request.

11. A device comprising:

- a router configured to route data between one or more hosts and one or more target devices; and

- a cache memory coupled to the router;

- wherein the router is configured to store inquiry data received from the one or more target devices and to provide at least a portion of

the stored inquiry data in response to a request for inquiry data corresponding to one of the target devices that is busy.

C. REJECTION

Claims 1-19 and 22 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,725,272 (“Susai”).

II. CLAIM GROUPINGS

1 “When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.” 37 C.F.R. § 41.37(c)(1)(vii) (2006).¹

Here, Appellants argue claims 1-10 and 22, which are subject to the same ground of rejection, as a first group (App. Br. 16-22) and claims 11-19 as a second group (*Id.* 23-25). We select claim 1 as the sole claim on which to decide the appeal of the first group and claim 11 as the sole claim on which to decide the appeal of the second group.

¹ We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

III. CLAIMS 1-10 AND 22

“Rather than reiterate the positions of parties *in toto*, we focus on the issue therebetween.” *Ex Parte Filatov*, No. 2006-1160, 2007 WL 1317144, at *2 (BPAI 2007). Appellants argue that Susai fails to disclose “inquiry data” as defined in the instant specification (App. Br. 17-18) and fails to disclose responding to a request by providing requested data from a cache memory (*Id.* 19-22).

In response, the Examiner finds that Susai discloses a response time, waiting time, or availability of a network device and equates any of these elements with inquiry data recited in claim 1. The Examiner further finds that Susai discloses a “proxy cache” and equates the proxy cache with the cache memory recited in claim 1 (Ans. 11-12).

Appellants assert that a request for “inquiry data” as defined in the specification at paragraph [0005]-[0006] is “not simply a request for *any* data stored on a target device, but is a request for data *about the target device itself*.” (App. Br. 17-18). Based on this interpretation, Appellants assert that Susai’s disclosure of “availability of a network device” is not equivalent to the claimed “inquiry data.” (Reply Br. 5).

Contrary to Appellants’ assertion, we note that the Specification fails to provide a definition of the term “inquiry data.” Rather, the Specification discloses that inquiry data “typically relates to the device itself . . .” (Spec. 2). We construe the term “typically” in accordance with its plain meaning, e.g., “typically” means “in most cases” or “characteristically.” Based on this usage of the term “typically,” it stands to reason that if “inquiry data” is data about the target device itself “most of the time,” then inquiry data is some other form of data at any of the remaining times.

In view of the lack of a definitive explanation in the Specification of what “inquiry data” includes and the lack of extrinsic evidence indicating what one of ordinary skill in the art would have understood the term “inquiry data” to encompass, we turn to the plain meaning of the terms. *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1373 (Fed. Cir. 2004) (Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say). Based on the plain meaning of the terms, we apply a reasonably broad interpretation and construe the term “inquiry data” to include any data associated with an inquiry or request. “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)).

Susai discloses that “the process begins when a client requests access to one of the servers in the server farm . . . tended by the interface unit **202**” (col. 5, ll. 3-6). Because information on the availability of a network device is associated with the device and this information is provided in response to a client’s request, we find that information on the availability of a network device constitutes “inquiry data” as defined herein. Hence, we agree with the Examiner that any of response time, waiting time, or availability of a device can constitute “inquiry data.”

We also find that, regardless of its definition, “inquiry data” constitutes “non-functional descriptive material” and is not accorded patentable weight. *Functional* descriptive material consists of data structures or computer programs which impart functionality when employed as a computer component. *Non-functional* descriptive material refers to data

content that does not exhibit a functional interrelationship with the substrate and does not affect the way the computing processes are performed. *See* MPEP § 2106.01 (2007) (“‘Non-functional descriptive material’ includes but is not limited to music, literary works and a compilation of mere arrangement of data.”).

When “non functional descriptive material” is recorded or stored in a memory or other medium (i.e., substrate) it is treated as analogous to printed matter cases where what is printed on a substrate bears no functional relationship to the substrate and is given no patentable weight. *See In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (“Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability. Although the printed matter must be considered, in that situation it may not be entitled to patentable weight.”). *See also Ex parte Curry*, 84 USPQ2d 1272 (BPAI 2005) (nonprecedential) (Federal Circuit Appeal No. 2006-1003; affirmed without opinion Jun. 12, 2006). The Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1582-83 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338 (Fed. Cir. 2004). *See also Ex parte Mathias*, 84 USPQ2d 1276 (BPAI 2005) (nonprecedential) (Federal Circuit Appeal No. 2006-1103; affirmed without opinion Aug. 17, 2006); Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. *In re Ngai*, 367 F.3d at 1339.

We find that the inquiry data constitutes non-functional descriptive material. In other words, we find that the steps of storing the inquiry data

and providing the inquiry data in response to a request do not change their functions based upon the content of the inquiry data. Because the inquiry data bears no functional relationship to the substrate (i.e., the storage or cache memory), we accord these claim limitations no patentable weight as non-functional descriptive material.

Based on the assertion that Susai fails to disclose inquiry data, Appellants further argue that Susai fails to disclose responding to a request by providing the requested (inquiry) data from a cache memory (Reply Br. 10). Because we find that Susai discloses “inquiry data” and that “inquiry data” is accorded no patentable weight in claim 1, we are unconvinced by Appellants’ argument.

Because Appellants have failed to demonstrate that the Examiner erred in rejecting claim 1, we affirm the rejection of claim 1 and of claims 2-10 and 22, which fall therewith.

IV. CLAIMS 11-19

As set forth above, we select claim 11 as the sole claim on which to decide the appeal of the group.

Appellants assert that Susai fails to disclose inquiry data (App. Br. 23-24). As aforementioned, we are unpersuaded by this argument.

Appellants further assert that Susai fails to disclose a router configured to respond to a request for inquiry data corresponding to one of the target devices that is busy using stored inquiry data (App. Br. 24-25). In response, the Examiner finds that Susai discloses an interface unit 202 that “could be a router (See column 4, lines 22-24).” (Ans. 13). In addition, the

Examiner finds that interface unit 202 of Susai “could be a proxy cache (See column 4, lines 22-24).” (Ans. 12).

We agree with the Examiner that Susai discloses the device of claim 11. Susai discloses a network with an interface unit 202 that includes any of a proxy cache, router, or any other network device (col. 4, ll. 21-24). Therefore, Susai discloses a router and a cache memory. The interface unit 202 receives a client request (col. 5, ll. 3-6) and provides data from a requested server based on the request (col. 6, ll. 25-27). Based on standard operation of a proxy cache, interface unit 202 (as a proxy cache) stores or caches retrieved data (such as commonly used web page information) from a server. The proxy cache receives the data from target devices (i.e., the server) and stores the information locally such that the data can be delivered to the next request in a timely manner. Hence, based on the standard definition of proxy cache, the interface unit 202 of Susai receives “inquiry data” (as aforementioned, including non-functional descriptive material) from a target device (i.e., a server), stores the data locally according to a standard function of a proxy cache, and provides the inquiry data in response to a request from a client.

Because Appellants have failed to demonstrate that the Examiner erred in rejecting claim 11, we affirm the rejection of claim 11 and of claims 12-19, which fall therewith.

V. ORDER

In summary, the rejection of claims 1-19 and 22 under § 102(e) is affirmed.

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No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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